

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

TREVOR FITZGIBBON

Plaintiff,

V.

Case No. 3:19-cv-477-REP

JESSELYN A. RADACK

Defendant.

**MEMORANDUM IN SUPPORT**  
**OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, Trevor Fitzgibbon (“Plaintiff” or “Fitzgibbon”), by counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rules 7 and 56, respectfully submits this Memorandum in Support of his Motion for Summary Judgment.

## **I. LISTING OF UNDISPUTED FACTS**

In accordance with Local Rule 56(B), Plaintiff contends that there is no genuine issue as to the following material facts:

1. On April 13, 2018, Fitzgibbon commenced an action against Radack in the United States District Court for the Eastern District of Virginia (Case 3:18-cv-247-REP) (the “Original Radack Action”). In a second amended complaint filed in the Original Radack Action [Document 60], Fitzgibbon alleged claims of malicious prosecution, defamation, insulting words, abuse of process, and conspiracy. He sought money damages. [*Declaration of Trevor Fitzgibbon* (“*Fitzgibbon Dec.*”), ¶¶ 2-3].

2. On April 9, 2019, Fitzgibbon and Radack signed a settlement agreement (“Agreement”) in which they resolved all claims, counterclaims and disputes between us, including those stated in the Original Radack Action. The Agreement is governed by Virginia law. [*Fitzgibbon Dec.*, ¶ 4].

3. Paragraph 4 of the settlement agreement contains the following material terms and conditions:

a. The Parties each covenant and agree that they will not tweet, retweet, reply, like or otherwise post anything on Twitter, Facebook, YouTube or any other social media platform, or any other print or media outlet, that mentions the other or that is of and concerning the other. For purposes of this Agreement, a statement is “of and concerning” a Party if the publication was intended to refer to him/her and would be so understood by persons reading it who knew him/her or if the publication was in its description or identification such as to lead those who knew or knew of the Party to believe that the statement was intended to refer to him/her.

b. The Parties covenant and agree that they will not direct, request, encourage, entice, procure or otherwise cause any third party, including but not limited to any friends, colleagues, or clients of the other, to tweet, retweet, reply, like or otherwise post anything on Twitter, Facebook, YouTube, any other social media platform, or any print or media outlet, that mentions the other or that is of and concerning the other.

c. In addition to the mutual affirmative covenants in paragraphs 4(a) and 4(b) above, each Party covenants and agrees that they will refrain from publishing, making, printing or communicating, electronically, orally, in writing, or in any other manner, to any third party (excluding family members) or to the print or broadcast media, within social media of any nature, or on the Internet, any disparaging comments or words that would cause or contribute to such Party being held in disrepute by the public.

d. For purposes of this Agreement, “disparaging” means defamatory, derogatory, deprecating, detracting, and/or pejorative. Nothing herein is intended to restrain or otherwise prohibit disclosures, communications, statements, or comments compelled pursuant to lawful order or process of a judicial, administrative, civil or criminal authority or proceeding.

Paragraph 4(e) of the settlement agreement provides that:

e. The Parties acknowledge and agree that a material breach of the provisions of this paragraph 4 would result in significant damage to the non-breaching Party. The Parties hereby acknowledge and agree that the amount of damages in the event of a material breach of the provisions of this paragraph 4 would be difficult or impossible to determine and that the amount \$1,000 for each tweet, retweet, reply, like, post or comment that violates paragraphs 4(a), 4(b)( or 4(c) is the best and most accurate estimate of the damages the non-breaching Party would suffer in the event of a material breach of this paragraph 4, that such estimate is reasonable under the circumstances existing as of the date of this Agreement and under the circumstances that the Parties reasonably anticipate would exist at the time of such material breach and that the breaching Party agrees to pay the non-breaching Party that amount as liquidated damages, and not as a penalty, if the non-breaching Party asserts, and a court of competent jurisdiction confirms, such a material breach. The burden of proof in any action alleging a breach of this paragraph 4 shall be proof by clear and convincing evidence.

Paragraph 19 of the settlement agreement states that:

19. Enforcement of Agreement; Attorneys' Fees. If any suit or action is filed by any Party to enforce any of the terms of this Agreement, the prevailing Party in such suit or action shall be entitled to recover all of their costs, expenses and attorney's fees incurred in connection with such suit, including, without limitation, all costs, expenses and attorney's fees incurred on any appeal, from the non-prevailing Party.

[*Fitzgibbon Dec.*, ¶¶ 5-8].

4. The settlement agreement is a valid and enforceable contract. [*Fitzgibbon Dec.*, ¶ 9].

5. After April 9, 2019, Radack published the following tweets, retweets, replies, likes, and direct messages:

5(a)




5(b)











5(c)


**unRAD-ACKted** @JesselynRadack · 19h





Please unfollow me if you also follow @Millenial1706, bc you unwittingly become a conduit for this kind of abuse:




 11
  8
  18
 


**Randy Credico** @Credico2016 · 17h




Wtf?


 3
 
 1
 


**@Kaidinn was suspended. Unity4J destroyer.**  
 @vcruytlczsdfa

Replying to @Credico2016 @JesselynRadack and @Millenial1706  
 Yes Randy it's by the "movement" unity4j who are working for serial rapist Fitzgibbon to harass Jesselyn into silence what he did to her. This is being spearheaded by Fitzgibbon, his girlfriend Diani, and unity4j's Suzie/Elizabeth/Caitlin/others.

8:31 PM · May 25, 2019 · [TweetDeck](#)

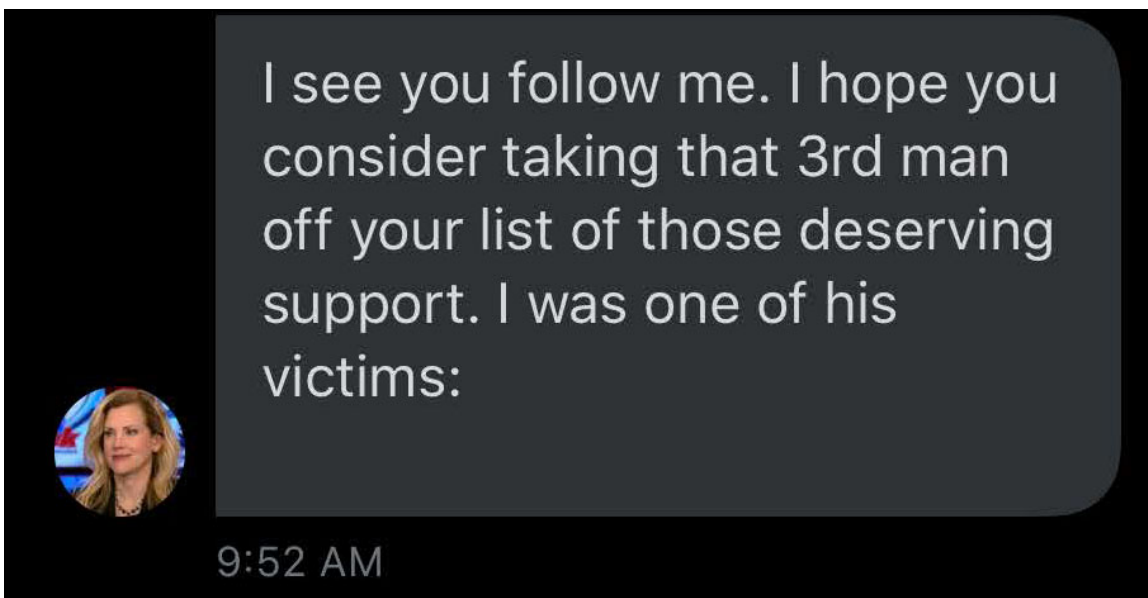


**unRAD-ACKted** @JesselynRadack · 2h

Replying to @vcruytlczsdfa @Credico2016 and @Millenial1706  
 Exactly.

5(d)



5(e)



5(f)

As part of Settlement, to end YEARS of stalking, I withdrew (not retracted) my allegations bc Trump financier Ed Butowsky has been underwriting TF's retaliatory actions against multiple victims,

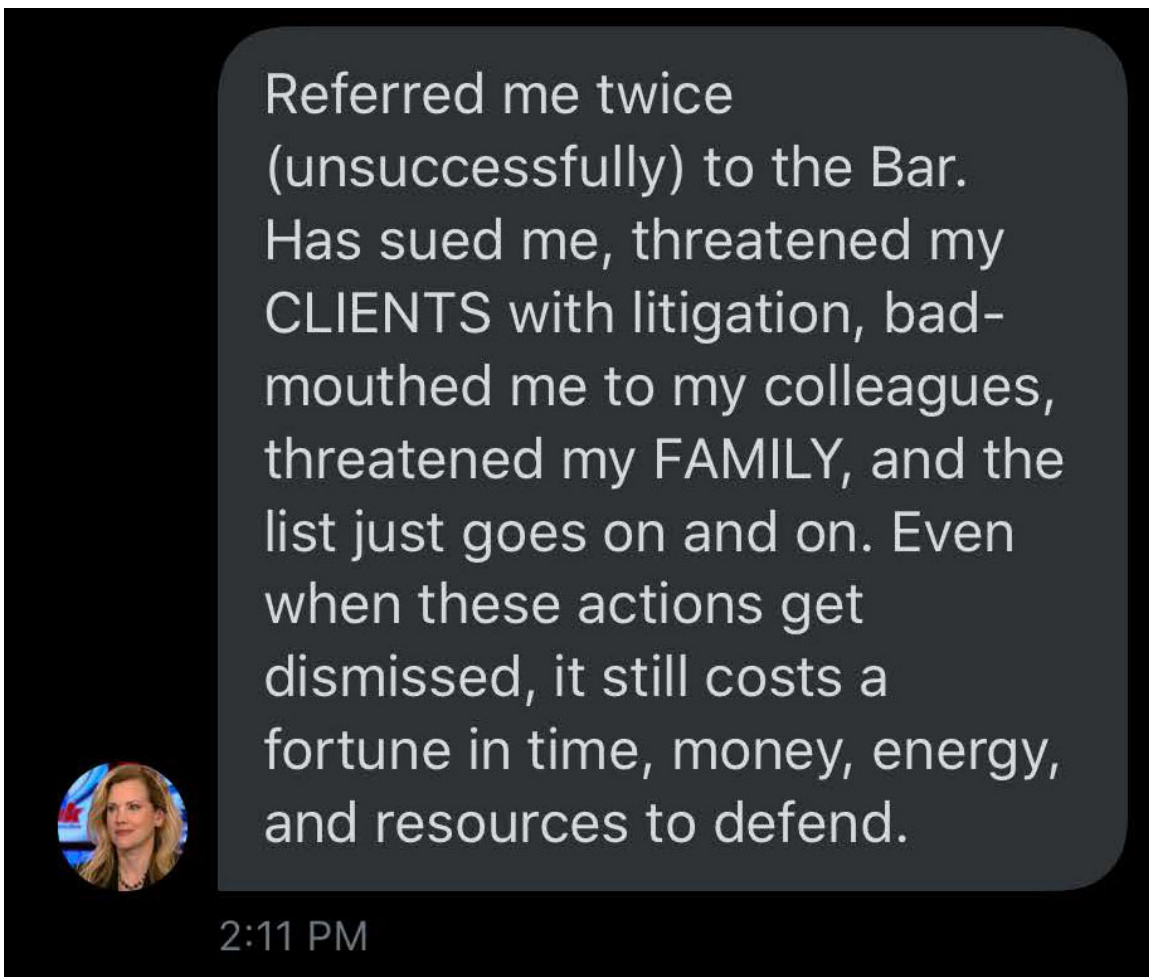


The Disturbing Story Of  
Widespread Sexual Assault Al...  
[huffpost.com](https://huffpost.com)

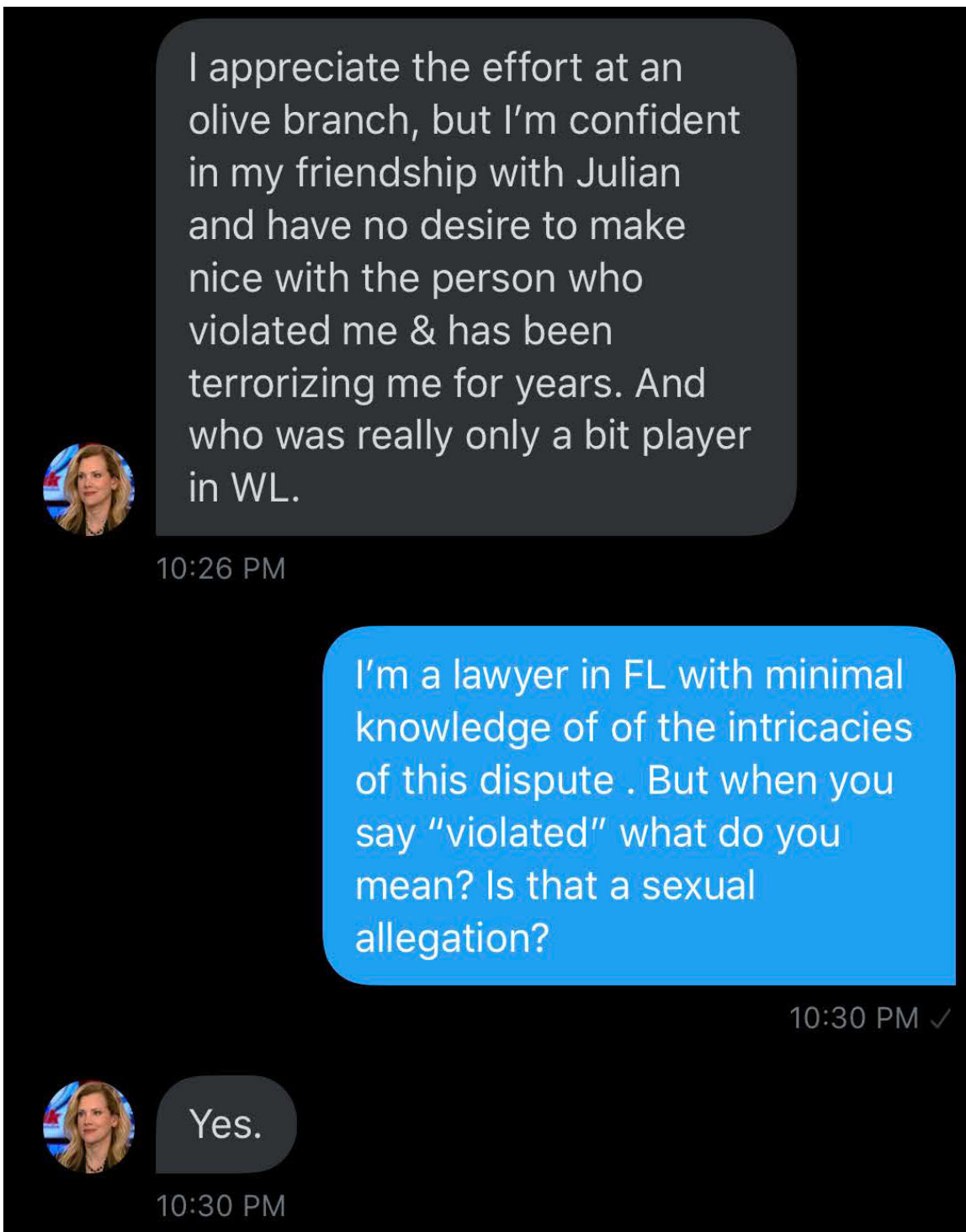


10:39 AM

5(g)

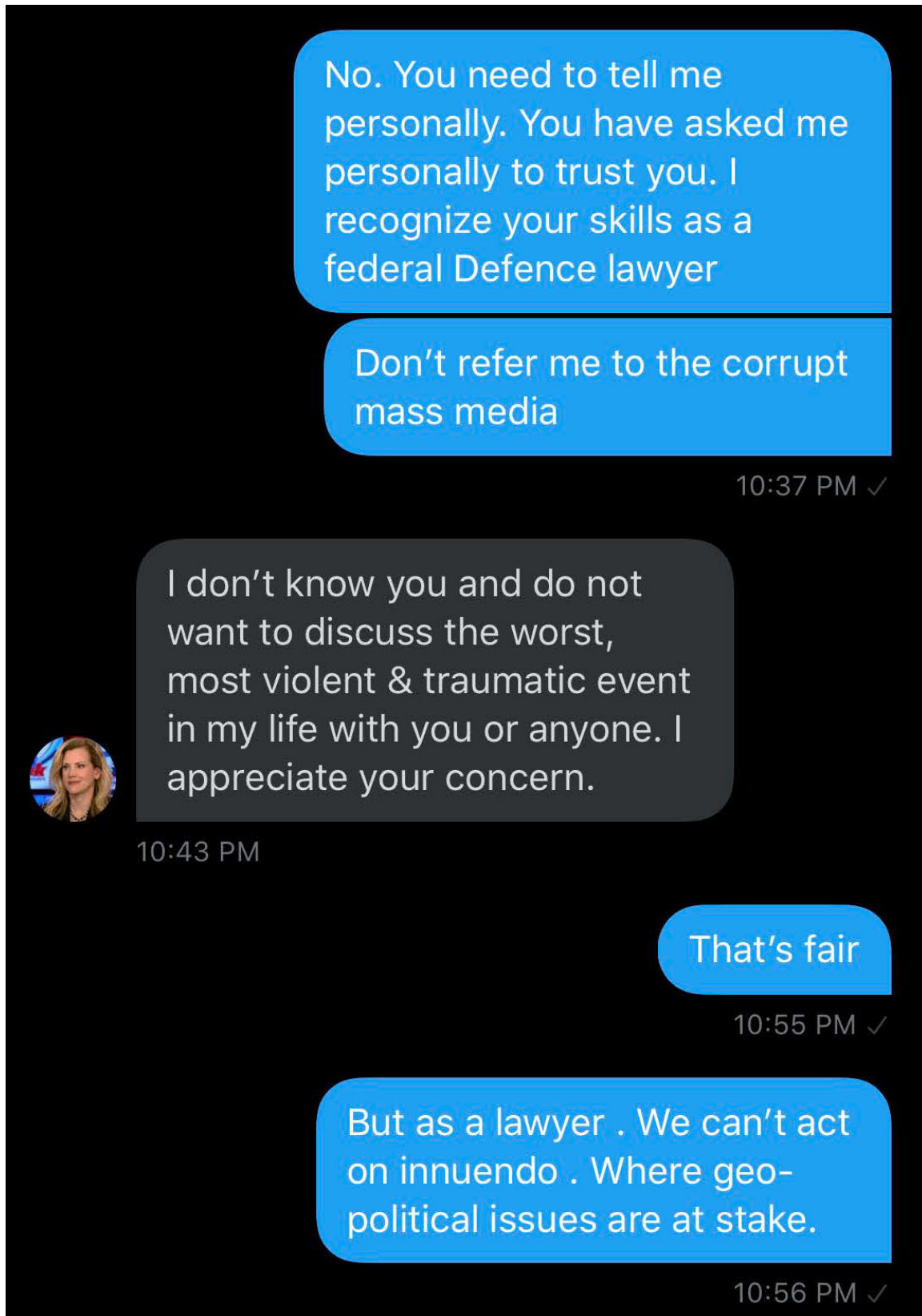


5(h)





5(i)




5(j)



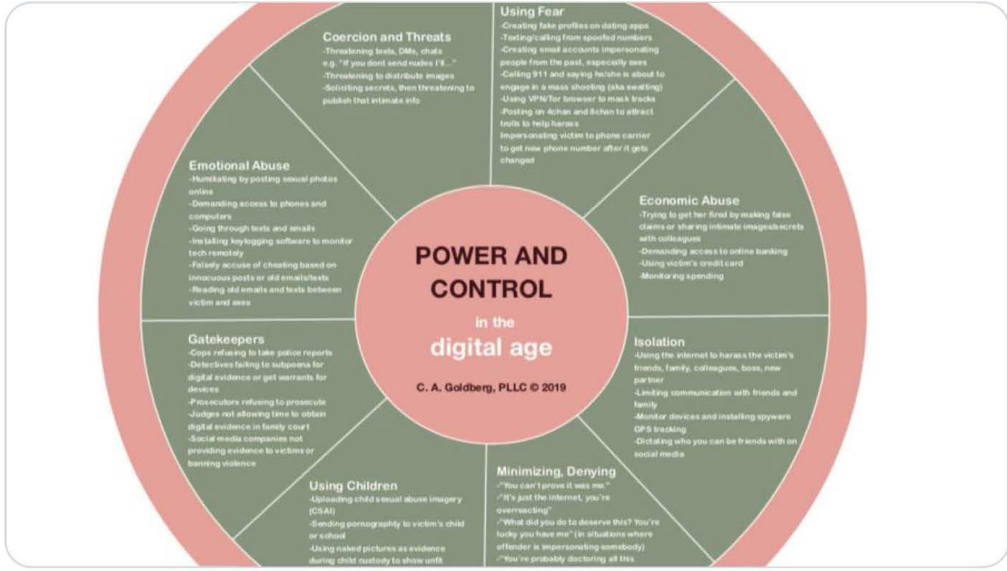
5(k)



5(1)


**Carrie A. Goldberg**  @cagoldberglaw · 3h

We updated the Power and Control Wheel for the digital age!!! All traditional elements of intimate partner violence are manifested in tech -- fear, economic abuse, isolation, minimizing & denying, using children, emotional abuse, coercion & threats.



**POWER AND CONTROL**  
in the  
digital age  
C. A. Goldberg, PLLC © 2019

- Coercion and Threats**
  - Threatening texts, DMs, chats
  - e.g. "If you don't send me this I'll..."
  - Threatening to distribute images
  - Deleting secrets, then threatening to publish that intimate info
- Using Fear**
  - Creating fake profiles on dating apps
  - Texting/calling from spoofed numbers
  - Creating email accounts impersonating people from the past, especially ones
  - Calling 911 and saying he/she is about to engage in a mass shooting (aka swatting)
  - Using VPN for browser to mask tracks
  - Posting on Facebook and Twitter to attract trolls to help harass
  - Impersonating victim to phone carrier to get new phone number after it gets changed
- Economic Abuse**
  - Trying to get her fired by making false claims or sharing intimate images/emails with colleagues
  - Demanding access to online banking
  - Using victim's credit card
  - Monitoring spending
- Isolation**
  - Using the internet to harass the victim's friends, family, colleagues, boss, new partner
  - Limiting communication with friends and family
  - Monitor devices and installing spyware
  - GPS tracking
  - Dictating who you can be friends with on social media
- Minimizing, Denying**
  - "We can't prove it was me."
  - "It's just the internet, you're overreacting."
  - "What did you do to deserve this? You're lucky you have me" (in situations where offender is impersonating somebody)
  - "You're probably delusional, all this"
- Using Children**
  - Uploading child sexual abuse imagery (CSAI)
  - Sending pornography to victim's child or school
  - Using naked pictures as evidence during child custody to show unfil
- Gatekeepers**
  - Cops refusing to take police reports
  - Detectors failing to subpoena for digital evidence or get warrants for devices
  - Prosecutors refusing to prosecute
  - Judges not allowing time to obtain digital evidence in family court
  - Social media companies not providing evidence to victims or banning violence
- Emotional Abuse**
  - Humiliating by posting sexual photos online
  - Demanding access to phones and computers
  - Going through texts and emails
  - Installing keylogging software to monitor tech remotely
  - Falsely accuse of cheating based on innocuous posts or old emails/texts
  - Reading old emails and texts between victim and ones

4    24    43    

**unRADACKted**  
@JesselynRadack

Replying to @cagoldberglaw

Can I put his picture in the middle and throw darts at it?  
Because he fits every element on this wheel.

12:34 PM · Jun 13, 2019 · [Twitter for iPhone](#)



5(m)

**Llama #FreeAssange** @jimmysllama · 3h

**Suzie Dawson** @Suzi3D · Apr 28  
Yes, @ElizabethleaVos broke major story after major story re #Russiagate incl Mifsud & gets nowhere near the level of credit she should for it from mostly male peers  
  
Spread some love for the ladies please? @MaxBlumenthal @aaronjmate @mtaibbi @ggreenwald

**Prefer Anonymous33** @PAnonymous33  
Replying to @ElizabethleaVos @Suzi3D  
So Elizabeth Vos was not only one of the first journalists to discover Mifsud's Western Intel Connections, she was also one of the first to show how Forensicator's work lines up with Assange's claims. Her Russiagate work is second to none at this point.

 2   1 

**unRAD-ACKted** @JesselynRadack  
Replying to @jimmysllama  
**@ElizabethleaVos**, a millennial who lives in her mom's basement in Arkansas, is an eager stenographer for a predator and a deranged Julian groupie.  
  
11:05 AM · Jun 15, 2019 · [Twitter for iPhone](#)



5(n)



5(o)



5(p)

**Angelo Carusone**  @GoAngelo · Jun 3, 2018

Sinclair's @SharylAttkisson did a full segment today defending widely recognized sexual harasser Trevor Fitzgibbon, dismissed the reports from \*many\* women, never once even featured a single statement from the women that came forward. Just defended a sexual harasser.

[Show this thread](#)



23



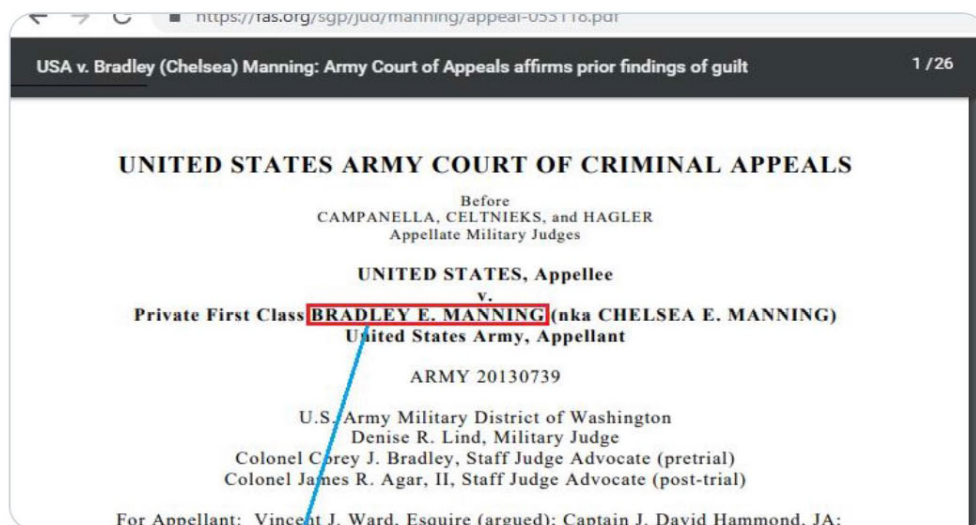
106



296

**General Sands** @MilitiaChief · Jun 19

@GoAngelo Julian Assange's PR man Trevor FitzGibbon contacted me recently. @Snowden's lawyer @JesselynRadack says he raped her. I met Sharyl Attkisson at Clinton's #whistleblower summit. I know for a fact @georgesoros funds Snowden, Manning & Assange. My name is General Sands.



2



1

**unRADACKted**

@JesselynRadack

Replying to @MilitiaChief @SharylAttkisson and 3 others

Wrong on 3 counts. 1) He was never #Assange's "PR man," 2) Anyone can be an amicus on a brief, 3) Soros is not funding @Snowden or @xychelsea.

1:01 PM · Jun 26, 2019 · [Twitter for iPhone](#)

5(q)





5(r)

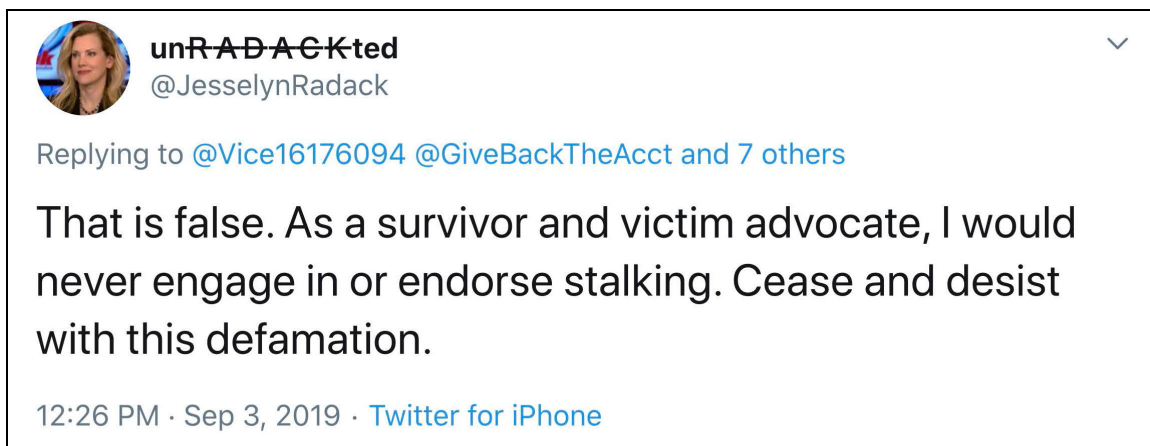




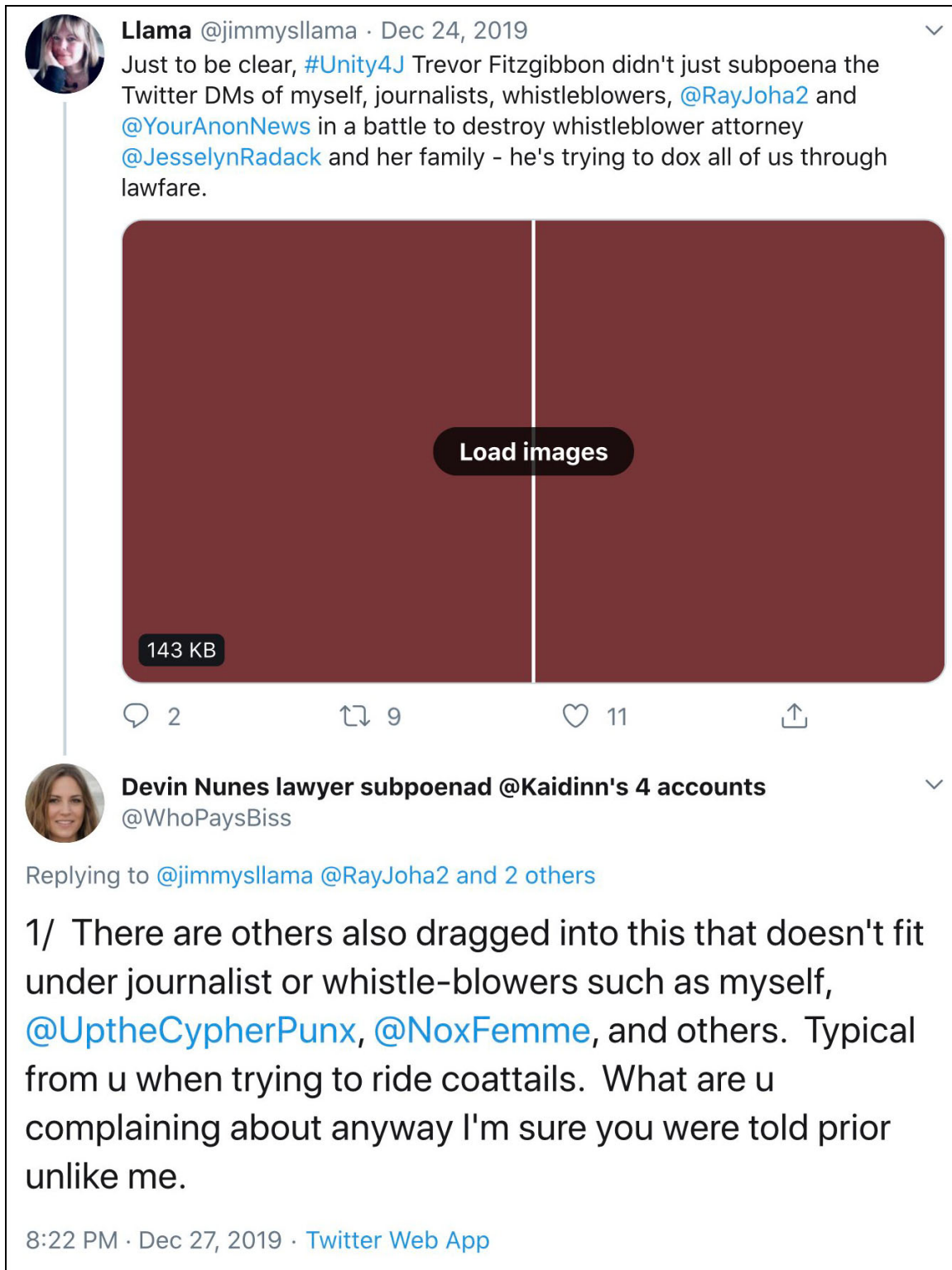
5(s)



5(t)

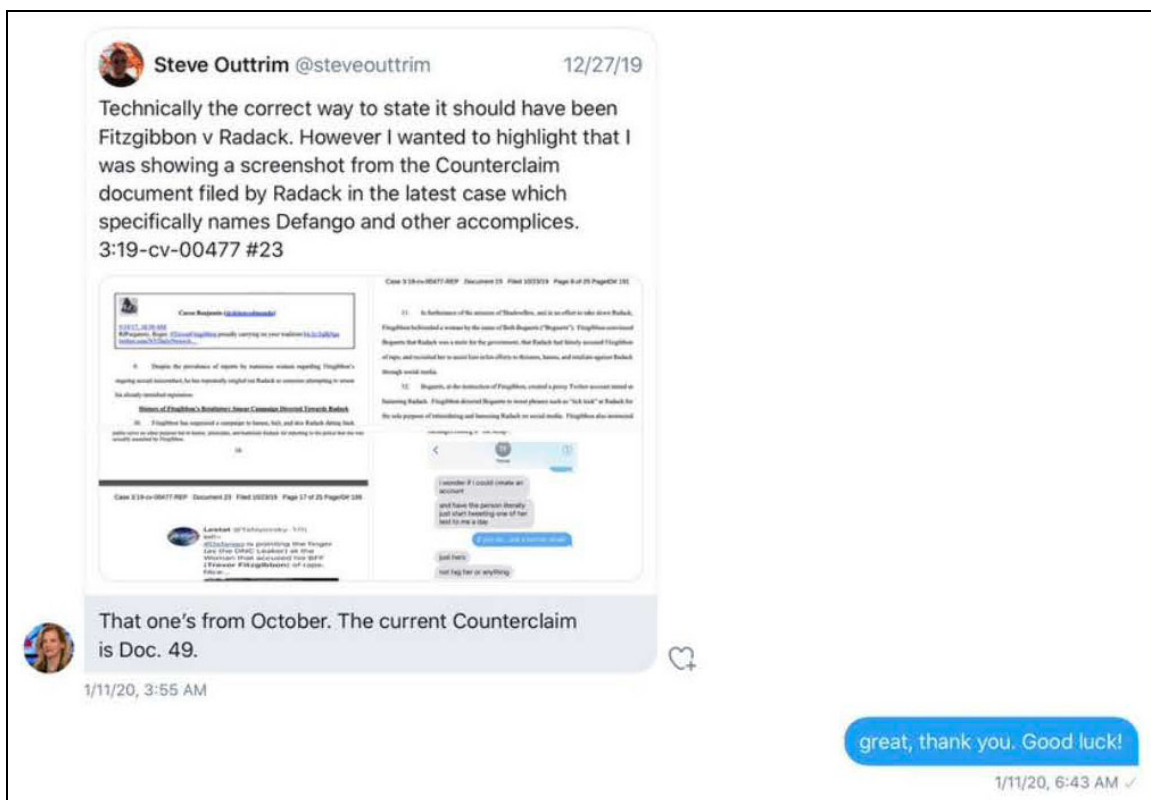


5(u)

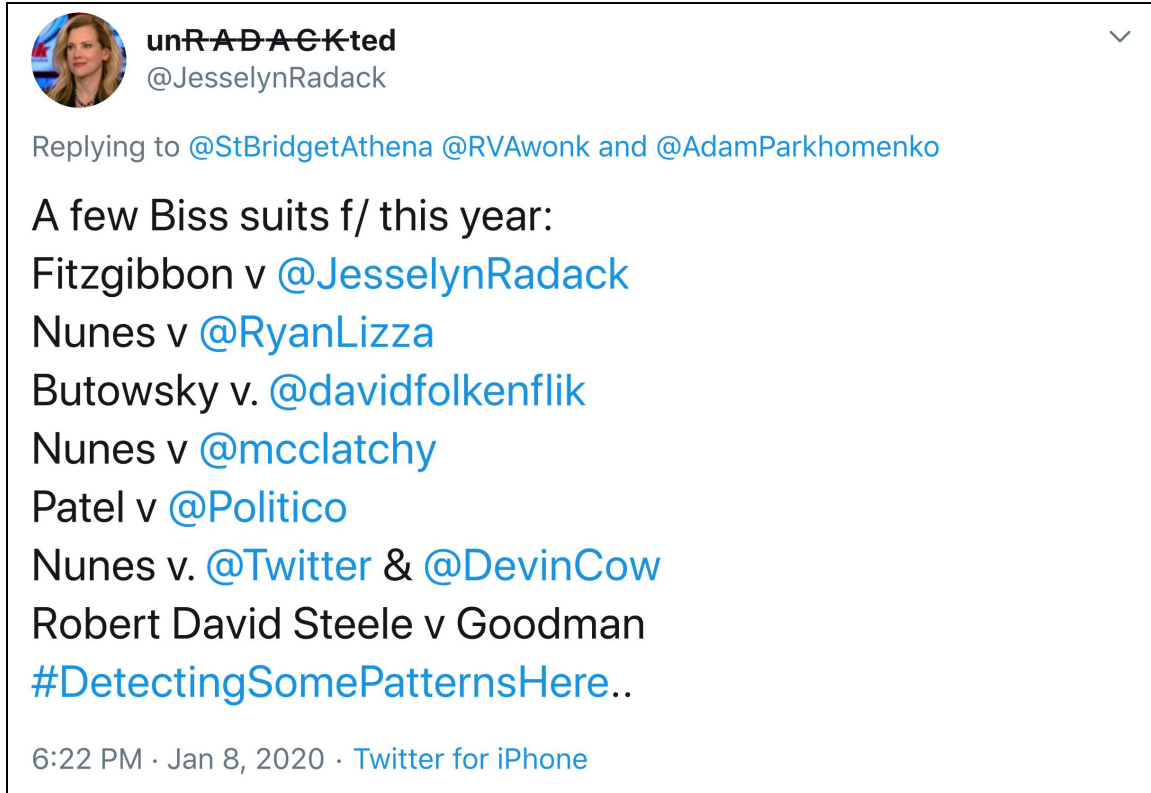




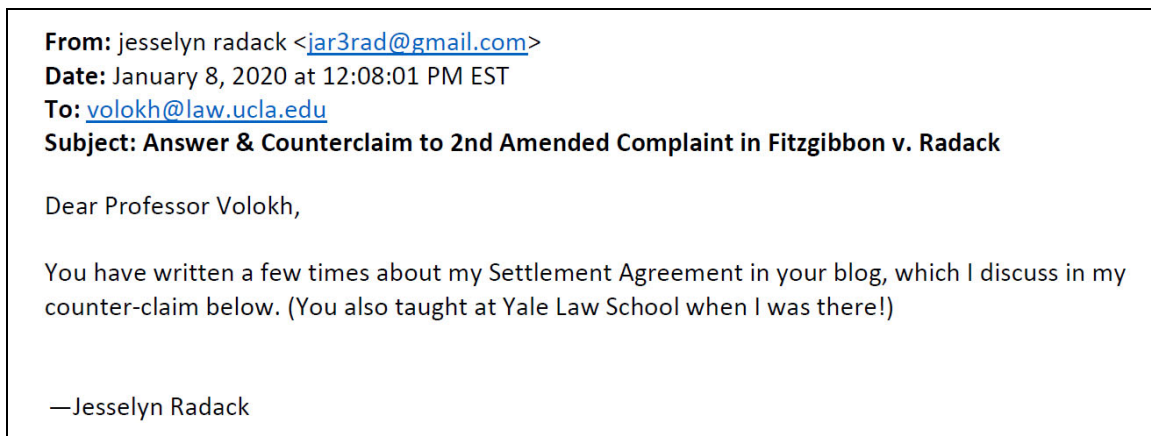
5(v)



5(w)



5(x)



5(y)

**From:** jesselyn radack <[jar3rad@gmail.com](mailto:jar3rad@gmail.com)>  
**Date:** January 8, 2020 at 2:28:51 PM EST  
**To:** Raymond Johansen <[Raymond.Johansen@hacktivistculture.com](mailto:Raymond.Johansen@hacktivistculture.com)>, Bailey Lamon <[bailey.lamon@protonmail.ch](mailto:bailey.lamon@protonmail.ch)>  
**Subject:** My counterclaim against TF

5(z)



Ella Mae @StBridgetAthena · Jan 10

Yeah. When I was going through things today it looked like there were two?

6



unRAD-ACKted

@JesselynRadack

Replying to @uno01112020 @StBridgetAthena and 15 others

Dismissed.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

TREVOR FITZGIBBON

Plaintiff,

v.

)  
)  
)  
)  
)  
)

Case No. 3:18-cv-247-REP

24



5(aa)





**Llama**  
@jimmysllama

Replying to @i1lusiveman

Of course. I'm curious though whose side I'll be testifying for, Trevor or Radack's? I seem to be accused of conspiring with both. Any insight?

8:45 AM · Jan 13, 2020 · [Twitter Web App](#)

**Liked by**



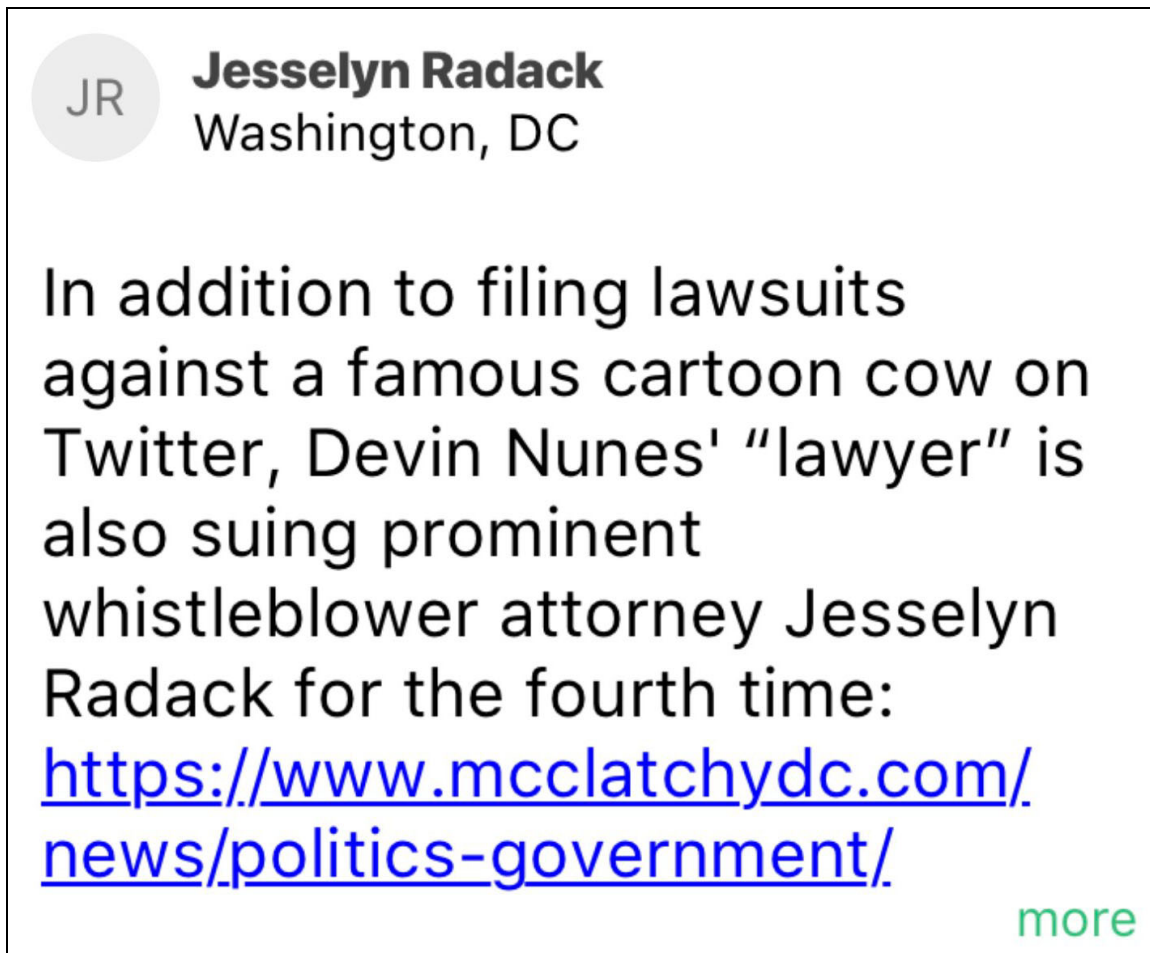
**unRADACKted**  
@JesselynRadack

[Follow](#)

Whistleblower & human rts maven, Snowden's lawyer, mom of 3, Jew(ish), yogi, alum of [@BrownUniversity](#), [@YaleLawSch](#) & [@TheJusticeDept](#)  
Tweets=opinion & RT≠endorse

5(bb)





[*Fitzgibbon Dec.*, ¶ 12; *Declaration of Eric Morgan* (“*Morgan Dec.*”), ¶¶ 7, 10, 11, 14, 15].

6. In addition to the above tweets, retweets, replies, liked, posts, and direct messages, Radack has, upon information and belief, sent many more direct messages and encrypted messages and emails to Johansen, @jimmysllama, @Kaidinn, and to others that mention me, that are of and concerning me, and/or that disparage me. Radack refuses to disclose these documents, which are in her exclusive possession and control. [*Fitzgibbon Dec.*, ¶ 13].

7. On June 28, 2019, Fitzgibbon filed this action to enforce the terms of the settlement agreement. He engaged legal counsel at a regular and customary rate of \$400

per hour. Fitzgibbon has suffered liquidated damages as a result of Radack's breach of the settlement agreement in the sum of \$28,000.00. He has incurred substantial attorney's fees (in a sum to be shown by a separate Declaration of counsel), which are ongoing and which he is obligated to pay. He has paid \$400 in court costs to date. [*Fitzgibbon Dec.*, ¶ 14].

## II. DISCUSSION

### A. Standard of Review

Summary judgment under Rule 56 is appropriate when the record demonstrates that there exists no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(a)*. Although the Court must view the record "in the light most favorable to the non-moving party," *Dulaney v. Packaging Corp. of America*, 673 F.3d 323, 324 (4<sup>th</sup> Cir. 2012), "[t]he mere existence of a scintilla of evidence in support of the [nonmovant's] position will be insufficient" to overcome summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *see also Am. Arms Int'l v. Herbert*, 563 F.3d 78, 82 (4<sup>th</sup> Cir. 2009). Rather, a genuine issue of material fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Moreover, "[t]he mere existence of some alleged factual dispute" cannot defeat a motion for summary judgment. *Hooven-Lewis v. Caldera*, 249 F.3d 259, 265 (4<sup>th</sup> Cir. 2001). Instead, the dispute must be both "material" and "genuine," meaning that it must have the potential to "affect the outcome of the suit under the governing law." *Id.*

**B. Radack Breached The Settlement Agreement**

The parties' contract is governed by Virginia law. [*Fitzgibbon Dec.*, ¶ 4]. Under Virginia law, Fitzgibbon must show three elements to successfully bring an action for breach of contract: “(1) a legally enforceable obligation of a defendant to a plaintiff; (2) the defendant's violation or breach of that obligation;” and (3) “injury or damage to the plaintiff caused by the breach of obligation.” *Filak v. George*, 267 Va. 612, 619, 594 S.E.2d 610 (2004).

The settlement agreement clearly obligates Radack to refrain from publishing any tweet, retweet, reply, like or other post on Twitter that “mentions” Fitzgibbon or that is “of and concerning” Fitzgibbon. The settlement agreement further obligates Radack to refrain from publishing or communicating – electronically, orally, in writing, or in any other manner – to any third party (excluding only family members) “any disparaging comments or words that would cause or contribute to such Party being held in disrepute by the public.” The evidence presented by Fitzgibbon clearly demonstrates that Radack breached the settlement agreement. Radack published numerous tweets, retweets, replies and likes that mention Fitzgibbon by name and that are “of and concerning” him. The direct messages sent by Radack to Eric Morgan on June 8, 2019 are most certainly disparaging. Finally, there is no dispute that Fitzgibbon has suffered liquidated damages caused by Radack's breaches.

**C. Fitzgibbon Is The Prevailing Party**

Paragraph 19 of the settlement agreement states as follows:



19. Enforcement of Agreement; Attorneys' Fees. If any suit or action is filed by any Party to enforce any of the terms of this Agreement, the prevailing Party in such suit or action shall be entitled to recover all of their costs, expenses and attorney's fees incurred in connection with such suit, including, without limitation, all costs, expenses and attorney's fees incurred on any appeal, from the non-prevailing Party.

Fitzgibbon is the prevailing party in this action. *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources*, 532 U.S. 698, 603 (2001) (“Black’s Law Dictionary 1145 (7<sup>th</sup> ed.1999) defines ‘prevailing party’ as ‘[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded ... Also termed *successful party*.’ This view that a ‘prevailing party’ is one who has been awarded some relief by the court can be distilled from our prior cases.”); *Sheets v. Castle*, 263 Va. 407, 413-414, 559 S.E.2d 616 (2002) (“We need not go farther than *Black’s Law Dictionary* for [the] common meaning [of ‘prevailing party’]: ‘A party in whose favor a judgment is rendered, regardless of the amount of damages awarded.’ *Black’s Law Dictionary* 1145 (7<sup>th</sup> ed.1999).”); *see id. Ulloa v. QSP, Inc.*, 271 Va. 72, 82-83, 624 S.E.2d 43 (2006) (plaintiff, who obtained a favorable verdict on its breach of contract claim, but was awarded no damages, was the prevailing party).

Here, the contract plainly entitles Fitzgibbon to recover “all” attorneys fees incurred in connection with this suit. Federal Rule of Civil Procedure 54(d)(2) provides that a “claim for attorney’s fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.” The Rule also sets out timing and content requirements for a motion for attorney’s fees. *Fed. R. Civ. P. 54(d)(2)(B)*.

**CONCLUSION AND REQUEST FOR RELIEF**

For the reasons stated above, Trevor Fitzgibbon requests the Court to enter partial summary judgment in his favor on his breach of contract claim against Jesselyn Radack, and to award liquidated damages, attorney's fees and costs incurred.

DATED: May 28, 2020

TREVOR FITZGIBBON

By: /s/ Steven S. Biss  
Steven S. Biss (VSB # 32972)  
300 West Main Street, Suite 102  
Charlottesville, Virginia 22903  
Telephone: (804) 501-8272  
Facsimile: (202) 318-4098  
Email: [stevenbiss@earthlink.net](mailto:stevenbiss@earthlink.net)

*Counsel for the Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2020 a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel for the Defendant and all interested parties receiving notices via CM/ECF.

By: /s/ Steven S. Biss  
Steven S. Biss (VSB # 32972)  
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*Counsel for the Plaintiff*